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Supreme Court, U.S.
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No. 99M49

In the

Supreme Court of the United States

October Term 1999

Edward D. Cowhig
Petitioner, Pro Se

v.

Louis Caldera, Secretary of the US Army
Respondent

Petition for Writ of Certiorari
To US Court of Appeals (1st Cir.)
In Case No. 98-1705

Edward D. Cowhig
Petitioner, Pro Se
245 C.J. Cushing Hwy.
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7 pp

Question No. 1

Is it not clear that the Court of Appeals (1st Circuit) and the Court of Federal Claims have decided an important question of federal law that conflicts with a relevant decision of this Supreme Court, as in the Greene v. McElroy case (360 US at 508 and Greene v. US 84 S.Ct. 615 (1964) where it was held that "respondents were not empowered to deprive the petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross examination "and also that a private associations failure to afford procedural safeguards may result in the imposition of damages without inquiry into whether the association's action lacked substantial basis?"

Question 2

Have not the courts below and the administrative bodies involved ignored the stipulations of statutory law 10 USC 3781-3785 (now 10 USC 1181-1185) in regard to a Regular Army Officer pertaining to the requirements of that law for a show cause hearing and to "provide access to" and "furnished copies of records at all stages," when even the required Board of Inquiry is denied and where there is no recommendation from the Secretary of the Army?

Question No. 3

Is not the Supreme Court's special competence in questions of law particularly at stake here where the rules of law as in the Federal Rules of Civil Procedure (FRCP) in regard to Rule 44 (b) therein, speaks of the "lack of record as admissible as evidence that the records contain no such record or entry," especially relevant as the government having legal custody, under blue ribbon seal certified under oath in the Court of Claims in 1980 that my Official Military Personnel File (OMPF) was "true and exact" wherein there was no official "Caraway Report?"

Question No. 4

Should not this court consider that: The Supreme Court has stated "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness or fairness of procedure followed in the prior litigation?" (Montana vs. US (1979), 99 S. Ct. 970, 979)

Question No. 5

Is not the requirement of an official report/record necesary in adminsitrative action as the Corut of Claims held in Friedman v. United States, 1958, 158 F. Supp. 364; 141 Ct. Cl. 239, also a requirement in all judicial actions and its absence to be considered arbitrary, capricious, and contrary to law, especially so in the case where the putative author has denied preparing it?

Question No. 6

Is not the denial of access, requested under the Freedom of Information Act, to the official document of the "Caraway Report" by this plaintiff a situation similar to the case this Supreme Court has accepted, No. 98-1904, United States v. Weatherhead especially as the opinion in 1980 of the Chancellor of the Military Ordinariate as to its confidentiality was withheld from the ABCMR?

Question No. 7

Does not the law hold in the face of fraudulent concealment and false statements such as described here in this case in the view of 18 USC 1512 which prohibits even the persuasion of another person to withhold, alter, destroy, or mutilate documents to prevent their use in an official proceeding?

Question No. 8

Do not the stipulations of various laws such as 18 USC 1503, 1505, 1506, 2071, as well as 18 USC 1001 prohibit the attempt to obstruct justice and for liability to result the action need not intend to obstruct justice, so long as that is the natural and probable consequence of the actions? (See US v. Rasheed, 663 F.2d Ct) (US v. Neiswender, 590 F.2d 1269 (4th Cir) 852).

Question No. 9

Should not Restatement Second of Judgments - Section 62 speaking of exceptions to preclusion of issue and claim which states in (b) "where the defendant's fraud or misrepresentation presented the plaintiff from including the entire claim in the original action," hold in this case?

Question No. 10

Should not Restatement Second of Judgments, No. 26(3) control, now in this continuing injury case, in that Restatement Second states that: "for reasons of substantive policy in a case involving a continuing or recurrent wrong, the plaintiff is given an option to sue once for the total harm, both past and prospective, or sue from time to time for the damages incurred to the date of the suit and chooses the latter course?

Question No. 11

It is not for this Supreme Court to ordinarily question the motives of an official of the Catholic Church in his decisions in this case but the fact that the officials concerned did not follow the prescriptions laid down in Statutory Law 10 USC 3785 and the Code of Federal Regulations 32 CFR as they promise to do as a faith body recognized by the government 32 CFR 65 to "abide by the policies of the DoD" (Department of Defense) (32 CFR 65.5 (b)(v)) which should at least include as policies, the Constitution, statutory law and the Code both of Federal Regulations and Canon law of the Church, but is it not a question that should be answered as to date it has not by any of the lower courts?

Question No. 12

Can anyone call it fair of just when and as so many of the questions presented here and the answers to them have gone unacknowledged by the courts and administrators below unless they were merely "result oriented" and focused only what was and is a misapplication of the doctrine of the statute of limitations particularly in view of the gross misrepresentation to Speaker John McCormack in 1964 that the "Caraway Report" was to Cardinal Spellman when it is most clearly manifest that when this plaintiff finally after 19 years, received a duplicate of the Caraway Report in 1980 for the first time it was not so addressed?

Question No. 13

Is it fair to accept a document as true and authentic when it is not in the official records and additionally the putative author has denied preparing it and also asserts after investigation that no one in his headquarters, military or civilian did so, and then later in a telephone conversation, with Bishop O'Connor, now Cardinal Archbishop of New

York, asserted that he presumed his deputy was responsible and assumed that his deputy knew the facts, when I know that he could not know of himself and the interior criticism of the document, an analysis of the duplicate "Caraway Report" confirms this?

Question No. 14

Is it not true Chaplains have no command function 10 USC 3581, even though some act as if they did and even some high ranking officers and generals operate as if the chaplains did have such command, not supervisory function?

Question No. 15

Can anyone say that it is not an obstruction of justice and not barrier to the holding of the statute of limitations and not an untruth when the Speaker of the House of Representatives is deceived by the Chief of Legislative Liaison Gen. Weyand when he expressed to the Speaker of the House of Representatives that the "Caraway Report" was to Cardinal Spellman of New York?

Question No. 16

Is not the continuous and continuing fraudulent concealment of a fraud, the loss, destruction of an official military report to the Chief of Chaplains, US Army, which the Government has a duty to disclose, "to grant access to and furnish copies of" to a Regular Army Officer who is being considered to be removed from active duty and the list of Regular Army Officers because of alleged substandard performance of duty as 10 USC 3781-3787 (now 10 USC 1181-1187) requires, a reason for this Supreme Court to act in the failure of lower courts to discern constitutional and statutory violations to liberty, freedom of speech, to free exercise of religion, and the denial of due process, and equal protection of the law?

Question No. 17

Can anyone say it is fair or just or equitable when the official report of purported allegations is fraudulently concealed and the concealing party attempts to shift responsibility for custody and authentication onto a third party, in this case the officials of the Catholic Church?

Question No. 18

Can anyone say that a full opportunity to present one's case, or an opportunity to get to the merits is obtained when *tainted,* false evidence is employed, as it has been in all previous encounters with the courts and administrative bodies?

Question No. 19

Can Restatement Second of Judgments which takes a pragmatic approach and looks to the transaction from which the action arose and which is to be determined pragmatically, control when the very foundation of the transaction is unjustly and illegally withheld, preventing a "full and fair" opportunity to litigate?

Question No. 20

It is not more than clear that the Army Board for the Correction of Military Records (ABCMR) violated 10 USC 3785 in its decision of 1974 when it decided that this plaintiff was "involuntarily released" under 10 USC 3785 and by the authority of 10 US 3785 in the absence of the official report?

Question No. 21

Is it not more than clear that the "reluctant resignation" and as so expressed in my forced resignation papers was done at the demand of Church authorities as they have subsequently admitted that the reason for their action was motivated by their receipt of the "Caraway Report?"

Question No. 22

Is not the excessive and impermissible entanglement of Church and State affairs clearly evident in this case, so much so that in 1980 Congress enacted 10 USC 643 and the US Army enacted an Army regulation (AR 635-100) that requires the Chief of Chaplains to notify and inform in writing, any chaplain of contemplated loss of endorsement and that he has right to counsel?

Question No. 23

Is not the purpose of the Supreme Court to make a rational inquiry into the truth of the matter particularly when reputation, a liberty interest, is involved as well as property interests and a constitutional right

to petition the government for a redress of grievances, especially when the right to free exercise of religion is constrained and the right to due process and equal protection of the law is violated?

Question No. 24

Should it not be clear that the Federal Courts below as well as the Court of Federal Claims, which latter court employed an observation of a previous court which somewhere had described my reluctant and forced resignation as "voluntary," despite the decision of the ABCMR in 1974 that this plaintiff was "separated involuntarily," indicate that in an important constitutional matter the courts have "so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure as to call for an exercise" of this Supreme Court supervisory power?

Question No. 25

Is it not true that an inferior court must be guided by a recent holding of the Supreme Court that a federal court may review and correct an administrative action under Section 1552 of Title 10, where it is alleged and proved that the discharge which the department refused to change was itself illegal? (See Harmon v. Brucker, (1958) 355 US 39; 76 S. Ct. 433)?

Question No. 26

Should not the principles communicated in 54 CJS 88, p. 127, now hold that; "the purpose of the fraudulent concealment doctrine is to prevent a party from profiting from his own wrong as the principles of equitable tolling due to fraudulent concealment are read into every statute of limitations" and where . . . "it is especially true where there exists a fiduciary relationship of trust?"

Question No. 27

Is it not clear that the court's below have been remiss in their responsibility as a reviewing court in upholding Title 5 USC 706 that states that a reviewing court shall: 1) compel agency action "unlawfully withheld or unreasonably delayed," and 2) many other stipulations (d)" without observance of procedure required by law and that in doing so the court shall review the "whole record?"

Question No. 28

Is it not true as the Supreme Court has stated; " . . . a judgement obtained in violation of procedural due process is not entitled to full faith and credit." (Griffin v. Griffin, 327 US 220, 1946)?

Question No. 29

Is it not valid to cite American Jurisprudence, 2 Ed, Vol. 37, 3144, pp. 196, 197 which states; "Unquestionably, the concealment of material facts that one is, under the circumstances, (here under the law 10 USC 3785), bound to disclose may constitute actionable fraud. Indeed, one of the fundamental tenants of Anglo-American law of fraud is that fraud may be committed by the suppression of truth (suppresio veri) as well as the suggestion of falsehood (suggestio falsi). it is therefore, equally competent for a court to relieve against fraud, whether it is committed by a suppression of the truth that is by concealment or by a suggestion of falsehood?"

Question No. 30

Does not this case manifest an impermissible intermingling in Church and State relationships, the corruption and dishonesty, as well as the illegality of custom and behavior between the office of the Chief of Chaplains and officials of the endorsing body of my Church, a religious faith group which promises in the Code of Federal Regulations (32 CFR 65.5(b)(v)) "To abide by the policies of the DoD (Department of Defense)?"

Question No. 31

Whether evidence in the form of an unauthenticated duplicate report can be admissible, according to Rule 1003 FRCP, especially when the putative author denied preparing any such report and stated that no one in his headquarters, military or civilian, did so and later in a telephone conversation he stated that he presumed and assumed on the word of his staff?

Question No. 32

Whether the present and long continued absence and disappearance of the initial essential official document is indicative of fraudulent concealment and an obstruction of justice, as well as bad faith?

Question No. 33

Is it not a grotesque misrepresentation by Maj. Gen. Fred C. Weyand, Chief of the Congressional Liaisons Office, in a letter to the Speaker of the House in 1964, that the "Caraway Report" was to Cardinal Spellman and hence an obstruction of justice, when it was not so?

Question No. 34

Does not fraudulent concealment of an essential, official document which the Government has a duty to disclose bar, toll the running of the statute of limitations?

Question No. 35

Is not the denial of the right to trial guaranteed by the Seventh Amendment, a denial of Constitutional right?

Question No. 36

Is not the Core of Due Process the right to notice and a meaningful opportunity to be heard violated in this case in which no notice of impending action was given initially and a meaningful opportunity to be heard due to the constraints of top-secret security, even before the ABCMR in which at least one member thereof stated he was not cleared?

Question No. 37

Can any reasonable person call it fair or just when the Chief of Chaplains office transmits the "Caraway Report" to church officials without access to this plaintiff and then afterwards, when the damage, that is in my reluctant resignation having been already accepted, has been done, a secretary momentarily flashes that report to this plaintiff and forbids him to even take notes on it?

Question No. 38

In view of the very first article of the "Universal Declaration of Human and Political Rights" endorsed by the United States in regard to conscience which says: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood," and Article 18

of the same declaration states: "Everyone has the rights to freedom of thought, conscience, and religion . . . ," is it not clear that the conscience of this plaintiff has been violated?

Question No. 39

Can the false allegations, and improper diagnoses, rebutted by competent medical testimony; and the improper evaluations by psychologists or psychiatrists, hostile to religious beliefs and practices and at the same time ignorant of the forces at play in a very perilous situation in 1961, be allowed to stand?

Question No. 40

Is it not clear to any reasonable person that this petitioner was deprived of his essential right to self-defense in 1961 because of his knowledge of top-secret plans and operations which the government has declared classified as late as 1984, and possibly still considers classified?

Question No. 41

Can false statements be allowed to stand?

Question No. 42

Is not the transmission of any official report to any other civilian authority without the knowledge of the party involved indicative of ignorance of the law and bad faith?

Question No. 43

Have not all the lower courts and administrative agencies in this long, long history of their dispute ignored the requirements stated in 5 USC 706, regarding the scope of review, especially 2(b) therein; "contrary to Constitutional Right, power, privilege, or immunity," and in making the determination "the court shall review the whole record;" and par. (f) of the same law "unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court?"

Question No. 44

In fairness and equity can this petitioner's resignation from the Regular Army because of false allegations and undue force and pressure from Church authorities in 1961 because they accepted as true the

"Caraway Report" based on the cachet of a three-star general, and without any access to this plaintiff of any report; can this resignation be considered in any way voluntary especially when the Army Board for the Correction of Military Records in 1974 declared the separation "involuntary" despite its failure to follow statutory law in regard to access, for a full and fair, impartial show cause hearing and its use of tainted evidence?

Question No. 45

Are not the deprivation of constitutional rights under the color of law, or in this case, the ostensible customary practice between the Chief of Chaplains office and officials of the Catholic Church, indicative of a violation of 18 USC 242?

Question No. 46

Is it or is it not an issue as to whether a contract exists between the United States Government and the Catholic Church in regard to Chaplains in general and Chaplains in the Regular Army and which contract has been violated wherein there has been a failure to follow statutory law as to procedure as well as the Code of Federal Regulations in regard to access of pertinent documents, a failure to provide a proper show cause hearing, violation of constitutional due process, denial of a right to trial while at the same time continuously and fraudulently concealing essential evidence, using tainted evidence and deceiving officials of Congress and my Church?

Question No. 47

Cannot the violation of conscience be manifest as Cardinal Law in an editorial in "The Pilot," 30 July 1999, stated, "We believe in the resurrection of the body and life everlasting, as the Creed professes. We believe that at the time of death the soul leaves the body and is judged by God. The soul may enter the joy of heaven, may have a period of purification in purgatory, or may go to the place of eternal separation from God, which is hell. It is helpful to recall the word of the *Catechism of the Catholic Church*: 'To die in mortal sin without repenting and accepting God's merciful love means remaining separated from Him forever by our own free choice. This state of definitive self-exclusion from communion with God and the blessed is called 'hell' (*Catechism of*

the Catholic Church, #1033)," and is it not so that this concern and belief as a matter of conscience and religious faith was the basis for this plaintiff's concern during the threatening years of 1960-1961 in Southeast Asia and as a Regular Army officer and chaplain in accord with 32 CFR 510.1?

Question No. 48

Is it relevant in this case that: the "Amended General Order, No. 13 (8 November 1996) of the United States Court of Federal Claims states: ". . . while the mandates of due process inevitably place limits on how expeditious a trial of a complex issue can be, there are no limits when parties voluntarily seek non-compulsory settlements. Since justice delayed is justice denied, it is an obligation of this court to further the settlement process in all ways consistent with the ultimate guarantee of a fair and complete hearing to those disputes that cannot be resolved by mutual consent. Courts are institutions of last resort . . . " when the Government has not only offered no settlement, but has tried to foist responsibility for custody and authentification onto my Church?

Question No. 49

Is there not an excessive intermingling and entanglement of Church and State in this case, especially as both entities have violated Constitutional protection and guarantees and statutory law and the Code of Federal Regulations as well as Canon Law of the Church, compounded by mendacity and arrogance and with reckless disregard of this plaintiff who possessed top-secret classified information at a time of imminent danger?

Question No. 50

Has not the United States Court of Appeals (1st Cir.) decided an important question of Federal law (10 USC 3781-3785) by ignoring it and avoiding the question completely by stating or implying that the case is frivolous "without merit" and "vexatious?" Rule 10(c) of this court.

Question No. 51

Is it not clear that this plaintiff has been denied the constitutional protection of due process where the 1961 putative official report is still

missing and it is manifest from notes in both the Chief of Chaplains office and memoranda in the office of the Military Ordinariate of the Catholic Church that both entities were predetermined to remove this Regular Army Chaplain from active duty even before I left Okinawa on 6 October 1961 and prior to the putative official report of 11 October 1961 and thus, acted in a collusive manner?

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Secretary of the US Army

Archdiocese for Military Services, USA

Archdiocese of Boston

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BASIS FOR JURISDICTION

The Constitution, Articles One, Four, Five, Seven, and Fourteen; the judgment of the Court of Appeals (1st. Cir.) in Case No. 98-1705, entered on 2 April 1999. Rehearing denied, 11 May 1999; Supreme Court (Justice Souter) extension of time to 8 October 1999.

Initial jurisdiction in District Court was pursuant to 28 USC 1331, 1343, 1343(3), 1346, 1361. Also Title 10 USC 1185 18 USC 1001; Title 42 USC 1983, 1985, 1996; 42 USC 2000(l)(3)(a); 18 USC 1512; 5 USC 706; 5 USC 552 (4)(B); 32 CFR 581.3(d)(5).

NOTE:

(Citations to Appendix of previous petition submitted under Rule 33.2 have been eliminated from this presentation under Rule 33.1 at the instructions by phone from Mr. Frank Lorsen, Clerk of Supreme Court who assured this plaintiff that the Appendix of Previous Petitions would be utilized herein as an exhibit. The previous petition had to be shortened, edited, and re-formulated to complly with orders, rulings, and instructions of the Clerk.)

THE LAW

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PETITION TEXT

Prologue Psalm 26:1,2

"Do me justice, O Lord! for I have walked in integrity,
and in the Lord I trust without wavering.
Search me, O Lord, and try me;
test my soul and my heart.
For your kindness is before my eyes,
and I walk in your truth."

1. Render to Caesar the things that are Caesar's and to God the things that are God's. (Mark 12:17) In civil society, no one is above the law! Surely, my reputation, a constitutional liberty interest, is at stake. It is being violated.

2. I am a Catholic priest. I was a Catholic chaplain for over ten years in parachute-airborne divisions with 199 jumps and serving as a Regular Army Officer, having been appointed by the President and confirmed by the US Senate and having served beyond the probationary period as a Regular Army Officer.

3. As a Catholic priest, I have the power, through the Catholic Church to forgive sins. This power was especially called for and in need during my tour of service in Okinawa (1960-1961) and especially after 1 January 1961 when our task force was alerted twice to parachute into a foreign country, Laos. (Classified) This power is in the internal forum.

4. Besides the imminent danger involved thereby and the multiple temptations facing all personnel, especially the young troops, this power to forgive sins and the requirement by my church in Canon Law (Canon 986) and the Code of Federal Regulations (32 CFR 510.1) to provide this capability was especially urgent in conscience. I need not remind this court of the seal of confession.

From the Acts of the Martyrdom of Saint Justin and his companion saints (Chp. 1-5, cf Patrologia Graeca 1566-1571)

"The saints were seized and brought before the prefect of Rome, whose name was Rusticus. As they stood before the judgement seat, Rusticus the prefect said to Justin: Above all, have faith in the gods and obey the emperors. Justin said: We cannot be accused or condemned for obeying the commands of our Savior, Jesus Christ.

Rusticus said: What system of teaching do you profess? Justin said: I have tried to learn about every system, but I have accepted the true doctrines of the Christians, though these are not approved by those who are held fast by error.

The prefect Rusticus said: Are those doctrines approved by you, wretch that you are? Justin said: Yes, for I follow them with their correct teaching."

5. I knew what was going on in that unhealthy environment on Okinawa. In fact, I told the troops that if they did wrong to go to confession. I emphatically and publicly advised them of the importance of seeking God's mercy to the extent that I said, "If you shoot the Pope, get to confession," little knowing that 20 years later, someone would shoot the Pope.

6. This was the background of my time on Okinawa. I was cleared for top-secret classified information and was in possession of top-secret information on plans and operations. I was the only Army Catholic Chaplain in Okinawa so informed. Other Catholic Chaplains, even those of higher rank than mine, were not cleared for such information which was on a "need-to-know" basis. My information was still classified as late as 1984.

7. The Assistant IX Corps Chaplain, not knowing the duties and responsibilities of an airborne chaplain, had been badgering, pestering my commander, behind my back, claiming that I was not doing enough for the IX Corps people. I believe but I cannot prove that he and others were responsible for much of the content of the so called "Caraway Report," under undue command influence from IX Corps Headquarters which was the cause of my separation from the Regular Army list and it is clear this "Caraway Report" was the motivating reason for my church's action in late 1961, as they stated in a letter to Cardinal Law in 1995, also, that they are not the custodians of military documents.

A. From a sermon by Saint Augustine, bishop, on Pastors (Sermon No. 46)

"This is our glory: the witness of our conscience. There are men who rashly judge, who slander, whisper and murmur, who are eager to suspect what they do not see, and eager to spread abroad things they have not even a suspicion of. Against men of this sort, what defense is there save the witness of our own conscience?" (Sermon 47, 12-14, De Ovibus: CCL41, 582-584.)

B. In the same sermon on Pastors (No. 46) St. Augustine said:

"So you wish to stray and be lost? How much better that I do not also wish this. Certainly, I dare say, I am unwelcome. But I listen to the Apostle who says: *Preach the word; insist upon it, welcome and unwelcome.* Welcome to whom? By all means welcome to those who desire it; unwelcome to those who do not. However unwelcome, I dare to say: 'You wish to stray, you wish to be lost; but I do not want this.' For the one whom I fear does not wish this. And should I wish it, consider his words of reproach: *The straying sheep you have not recalled; the lost sheep you have not sought.* Shall I fear you rather than him? *Remember, we must all present ourselves before the judgment seat of Christ.*"

This plaintiff feared the Lord if I did not do what the situation required, as I was to jump with them into Laos and partake in the same danger. My jeep was already aboard ship at sea as "land Tail," on the way to Bangkok.

C. St. Augustine also said,

"Hear and learn, you sheep of God. God calls for an accounting of his sheep from the wicked shepherds and inquires into the death of his sheep at their hands. For in another passage he speaks through the same prophet: *Son of man, I have appointed you a watchman for the house of Israel. You shall hear the word from my mouth and you shall point out the way to them in my name. When I say to the sinner: You shall die, and you do not speak to warn the wicked man from his wicked way, because of his wickedness he shall die, but you shall be held responsible for his death. If, however, you warn the wicked man to turn away from his wickedness, and he fails to do so, he shall die in his iniquity, but you shall have saved your soul.*"

D. St. Gregory the Great (from a homily on Ezekiel) (Lib. I, II, 4-6: CCL 142, 170-172)

"Son of man, I have made you a watchman for the house of Israel. Note that a man whom the Lord sends forth as a preacher is called a watchman. A watchman always stands on a height so that he can see from afar what is coming. Anyone appointed to be a watchman for the people must stand on a height for all his life to help them by his foresight." Also from St. Augustine, "So who am I to be a watchman, for I do not stand on the mountain of action but lie down in the valley of weakness? Truly the all-powerful Creator and Redeemer of mankind can

give me, in spite of my weakness, a higher life and effective speech; because I love him, I do not spare myself in speaking of him."

E. John 15:13 "No one has greater love than this, to lay down one's life for one's friends."

F. 1 Cor 2:7-10a "Eye has not seen, ear has not heard, nor has it as much as dawned on man what God has prepared for those who love him. Yet God has revealed this wisdom to us through the Spirit."

8. So much for general background of the time period of 1960-1961. In late October 1961, I received a letter from my Church authorities requesting my resignation. I travelled to New York City where I met the Chancellor of the Military Ordinariate, the endorsing agency for all Catholic Chaplains for all military services. It is branded in my mind his statement to me without showing me any report: "Ed, I am the umpire. When I say you are out, you are out!" Canon Law (C-188) states, "a resignation submitted out of grave fear or because of fraud is invalidated by the law itself."

9. I could not do otherwise as he insisted that I resign. Compelled by religious obedience and Canon Law (CC 1373), (opposition to Church authority). I reluctantly (and so stated on those papers) unwillingly submitted my resignation. Please note the disposition form (DF) of the Chief of Chaplains Office remarking that if the government did not accept my resignation, the Church would withdraw my endorsement. A Hobson's Choice!

10. A. I could not defend myself, without compromising my top-secret classification, to either Church authorities or to the Chief of Chaplains Office and furthermore, I was given no opportunity to do so or for a fair or any hearing. In conducting themselves in this manner both Church and State authorities denied my Regular Army rights and violated both statutory law (10 USC 3781-3785) and the Code of Federal Regulations (32 CFR 65.5(b)(v)) in which the endorsing agency promises to abide by DoD policies, (32 CFR 65.5 (b)(v)), as well as my consititutional right to due process and equal protection of the law. Later testimony, both medical and military, unrecognized by lower courts, are very clear as to the mismanagement, both military and medical, of this plaintiff's situation.

B. William O. Douglas, "Living Bill of Rights," Doubleday and Co., Garden City, NY (1961) on pp. 53-55, therein in speaking of basic freedoms and the rudiments of due process listed in (f) "the right of the accused to know what he is charged with, to present evidence in his defense and to have the process of the courts (subpoenas) to compel attendance of witnesses." (Br Ct. App. 1st Cir. par. 57, 58, pp.34, 35)

C. I have been denied these elements despite my clamor for them in the lower courts. In fact, I have been arbitrarily barred, which at least borders on bias and discrimination; "Depriving a man of his job, branding him as disloyal, and making him a virtual outcast was deemed to be punishment" US v. Lovett, 32 8 US 303. (Idem p. 35)

D. "Where it is apparent from the record that the medical records submitted by the applicant for correction clearly establish a sufficient basis for such correction, the court will find that the Board acted in an arbitrary and capricious manner in refusing to correct the record and also the denial of relief sought was not supported by substantial evidence on the record before the Board." (Lawler v. US 1965 60 Ct. Cl. 644, 10 USC 1590, Note 60.)

E. "Where former Army officer applied to the Air Force Board of Correction of Military Records to have his military record with regard to disability corrected, failure of the Board to carry out its statutory obligations and base its conclusion on **official record** before it was arbitrary, capricious, and contrary to law." (Friedman v. United States 1958, 158 F. Supp. 364, 141 Ct. Cl. 239.)

F. This Supreme Court has an obligation to the truth and a rational inquiry to the truth.

> "The direction in which the law moves is often a guide for decision of particular cases, and it serves to confirm our conclusion. However halting its progress, the trend in litigation is toward a rational inquiry into truth, in which the tribunal considers everything 'logically probative of some mater requiring to be proved.' Thayer, a Preliminary Treatise in Evidence, 530; Funk v . US, 290 US 371. This court has refused to accept assumptions of fact which are demonstratably false, United States v. Provident Trust Co., 291 US 272 even when agreed to by the parties, Swift and Co., v. Hocking Valley R. Co., 243 US 281."

G. In Proper v. US 154 F. 2d Supp. 317, at 323, Judge Littleton said: ". . . the record before the Board fully justified the finding of the majority and did not justify the statements made to support the dissenting opinion . . ." Further, he states: "We are of the opinion that on the record before the Board, the findings of the majority were fully warranted and the Secretary without the benefit of any additional evidence to the contrary, acted without proper authorization, contrary to law, section 207, and the regulations of the War department, in ignoring those findings and denying plaintiff correction of his Military Records as recommended by the Board."

11. The following case is analogous. Merely replace "security clearance" with "endorsement" and the comparison is obvious. Please remember that the threat of removing the endorsement was based on the "Caraway Report" sent to the Church by Government officials.

376 US 149
William L. Greene, Petitioner,
v.
UNITED STATES
No. 84
Argued Nov. 21, 1963
Decided Feb. 17, 1964.

"A government contractor's employee who lost his job when his security clearance was vacated brought an action against the United States for monetary restitution. The United States Court of Claims ordered the proceedings suspended pending pursuit of administrative remedies by the Department of Defense. The employee brought certiorari. The Supreme Court, Mr. Justice Goldberg, held that where the Supreme Court had held that the government acted without authority in denying security clearance to employee without providing safeguards of confrontation and cross-examination. . . ." at 615.

" . . . this Court (S.Ct.) reversing the decisions below, held that in the absence of explicit authorization from either the President or Congress the respondents were not empowered to deprive petitioner of his job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination.' Greene v. McElroy, supra, 360 US at 508, 79 S.Ct. at 1419. 3 L.Ed.2d 1377," at 619.

"On the contrary, the regulation should be interpreted to mean that where a claimant establishes that the Government has improperly denied clearance by its failure to provide fair procedures, the Government is liable and petitioner is entitled to recover 'in an equitable amount for any loss of earnings during the interim resulting directly from a suspension of clearance,'" at 619.

162 "[5] In a case such as the present, where the Government has acted without authority in causing the discharge of an employee without providing adequate procedural safeguards, we should be reluctant to conclude that a regulation, not explicitly so requiring, conditions restitution on a retrospective determination of the validity of the substantive reasons for the Government action–reasons which the employee was not afforded an adequate opportunity to meet or rebut at the time of his discharge. This principle is analogous to that reflected in state court decisions recognizing that 'a private association's failures to afford procedural safeguards may result in the imposition of damage liability without inquiry into whether the association's action lacked substantive basis * * *'" at 622, 623. See authorities cited in Silver v. New York Stock Exchange, 373 US 341, 365, n. 18, 83 S.Ct. 1246, 1261, 10 L.Ed.2d 389.

12. From a sermon of St. Lawrence Justinian, Bishop

"God places more value on good will in all we do than on the works themselves. Therefore, whether we give ourselves to God in the work of contemplation or whether we serve the needs of our neighbor by good works, we accomplish these things because the love of Christ urges us on. The acceptable offering of the spiritual purification is accomplished not in a man-made temple but in the recesses of the heart where the Lord Jesus freely enters." (Sermon in Festo Purificationis BVM: Opera 2, Venetiis 1751, 38-39)

Before I was officially separated, cashiered from the Army, "Fired," in 1962 without a hearing, I again sought an interview with Cardinal Spellman but he was out of the country and at his request, I saw and talked to Bishop Furlong of the Military Ordinariate which ended when he stated to me in an ambiguous way, "to win is to lose," which was a veiled threat at least. I was really squeezed between "top-secret" and "top-sacred."

As St. Paul wrote to the Romans, 12:14-16, "Bless your persecutors; bless and do not curse them. Rejoice with these who rejoice, weep with

those who weep, have the same attitude toward all. Put away ambitious thoughts and associate with those who are lowly."

13. This is what I was trying to do in consience at a perilous time. However, my constitutional right to freely practice religious freedom was extorted by unconstitutional means, namely, the denial and violation of due process and the violation of statutory law.

14. In a small way, my long-standing struggle has been what Robert P. George, the Cyrus Hall McCormick Professor of Jurisprudence at Princeton University has titled, "A Clash of Orthodoxies" in the August-September 1999 issue of *"First Things."* He says, "First, let's get clear what is at stake in the conflict between Christian (and Jewish and to a large extent Islamic) morality and the secularist orthodoxy. The issues immediately in play have mainly, though not exclusively, to do with sexuality, the transmitting and taking of human life and the place of religiously informed moral judgment in public life."

15. In this plaintiff's mind in other words, it is a clash between this world we live in while preparing and working for the next, which was my job as a Regular Army Chaplain. (32 CFR 510.1) In doing this, I am supposed to be protected by the Constitution and the Code of Federal Regulations. But I was not! And even now, I am not.

A. Rule 44. FRCP Proof of Official Record. ***(b) Lack of Record.*** "A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the caes of a domestic record, . . . is admissible as evidence that the records contain no such record or entry." But the Government has stated that the "Caraway Report" can only be authenticated by the Church. That is nonsense!

B. And Rule 1003 (Rules of Evidence below, should control), but Lt. Gen. Paul Caraway stated that neither he or any other prepared the so-called "Caraway Report."

C. Rule 1003. Admissibility of Duplicates. Admissibility of Duplicates. A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lielu of the original.

16. From a conference by St. Thomas Aquinas, priest (Coll. super *Credo in Deum*: Opuscula theologica 2 Taurini 1954, pp. 216-217).

St. Thomas said, "It is fitting that the end of all our desires, namely eternal life, coincides with the words at the end of the creed, 'Life everlasting. Amen.'"

"The first point about eternal life is that man is united with God. For God himself is the reward and end of all our labors: *I am your protector and your supreme reward.* This union consists in seeing perfectly: *At present we are looking at a confused reflection in a mirror, but then we shall see face to face.*"

"It also consists in the complete satisfaction of desire, for there the blessed will be given more than they wanted or hoped for. The reason is that in this life no one can fulfill his longing, nor can any creature satisfy man's desire. Only God satisfies, he infinitely exceeds all other pleasures. That is why man can rest in nothing but God. As Augustine says: You have made us for yourself, Lord, and our heart can find no rest until it rests in you."

A. "Hear, O Israel! The Lord is our God, the Lord alone! Therefore, you shall love the Lord, your God, with all your heart and with all your soul, and with all your strength. Take to heart these words which I enjoin on you today. Drill them into your children. Speak of them at home and abroad whether you are busy or at rest." *Deuteronomy, 6:4-7*

17. See my letter to Cardinal Spellman prior to separation. Church authorities of the Military Ordinariate ignorant of the situation in South East Asia have been less than forthright or honest in communicating with Cardinal Cushing of Boston as they transmitted to him in 1962 parts, not the whole, "Caraway Report" previously transmitted to the Chief of Chaplains US Army, which it had in its files. Cardinal Spellman, in 1964, reviewed what he called my record, which also contained the duplicate "Caraway Report" sent to them by the government but withheld from this plaintiff. Also Maj. Gen. Fred C. Weyand, Chief of Congressional Liaison, stated (1964) to Speaker McCormack that the "Caraway Report" was to Cardinal Spellman. Church authorities refused to grant access to that document.

A. On 12 April 1968, again the Church official, Msgr Marbach, reported to Cardinal Cushing that it was his "understanding" that Fr. Cowhig could not get a security clearance from the FBI." Cardinal Medeiros thought that it was a private letter to Cardinal Spellman.

Yet even then I was denied access to the duplicate in Church archives contrary to the express requirement of Canon 487 (2), in the (1983 Code) which reflected the spirit of the 1917 Code. *Canon 487 (2).*

"It is the right of interested parties to obtain personally or through their proxy an authentic written copy or a photocopy of documents which are public by their nature and which pertains to the status of such persons."

18. The same Church official who said to me in 1961 that, "I am the umpire!" and "When I say you are out, you are out;" also in a letter in 2 April 1968 (there was a war on) stated to my religious superior Cardinal Cushing that it was his "understanding" that I could not receive a security clearance from the FBI. The FBI later stated that they had no information concerning me. In 1980, this Church official still maintained the Church confidentiality of the "Caraway Report" in a telephone conversation with the ABCMR. But that memo thereto was withheld from the Board.

Henry Ford's maxim, "Don't complain, don't explain," might be convenient but I was given no opportunity to explain to anyone, besides being muzzled by top-secret information, as well as blinded; a true andabate.

19. Judge Stephen Breyer, now a Justice on this Supreme Court, wrote a book published by the Harvard University Press (1993) entitled "Breaking the Vicious Circle" (Toward Effective Risk Regulations.) "In considering the causes of the regulatory problems identified in Chapter 1, I wish to consider how public perceptions, Congressional actions and reactions, and technical regulatory methods reinforce each other. They tend to create a vicious circle, diminishing public trust in regulatory institutions and thereby inhibiting more rational regulation. Congress reacts to the public and influences the regulators, who, in their choice of methods and problems, in turn influence both public perception and Congressional reaction. Understanding and interaction of these three elements will suggest what we can and cannot change." (p. 33) This case at bar now has been a vicious circle or a vicious loop between Church and State, for a long, long time and I have been forced out of the loop.

20. The Government's disposition form of November 1961 under remarks should convince any reasonable person of the pressure, force, collusion of Church and State in violation of Statutory Law (10 USC 3781-3787) and the CFR (32 CFR 65.4(b)(v)). The official of the Chief

Chaplain's Office noted that if the resignation is not accepted, the Church will withdraw its endorsement, but that threat of withdrawal of endorsement, as it has since been acknowledged in 1995 letter to Cardinal Law, was based on what the government transmitted to them in the putative "Caraway Report" to the Chief of Chaplains.

21. The judgement of 2 April 1999 -- "the plaintiff has now filed five meritless actions in the District Court of Massachusetts, and at least two others elsewhere, pertaining to the same incident, his 1962 discharge from the Army -- "of frivolous and vexatious nature" -- "no abuse of discretion being apparent, the judgment is affirmed." (Ct. App. 1st Cir.) (98-1705). This is judicial nonsense! It amounts to judicial cover up of official wrongs as in 18 USC 241, 242, 1001, 5 USC 706.

22. Church officials to date have declined to present an "amicus curiae" brief leaving this plaintiff to "swing slowly in the winds." Any reasonable attempt at discovery either through the courts or otherwise was vitiated by the Congressional liaison statement in 1964 to Speaker McCormack that the "Caraway Report" was to Cardinal Spellman; the Church's refusal to provide a copy of their copy for 19 years; the government's statement that it was "missing;" and that "they did not know why" but said it was properly in the hands of the Church. On 2 March 1978, in a letter to Speaker O'Neill from the office of Legislative Liaison, they stated, "examination of Reverend Cowhig's official record fails to disclose any correspondence from Lieutenant General Paul Caraway to officials in the Department of the Army or to Cardinal Spellman." The purported author stated in 1979, he did not prepare any letter concerning me; the Government said in May 1980 to Sen. Tsongas it could only be authenticated by Church officials; then in August 1980 I finally received a copy of the Church's copy of the "Caraway Report" of which they denied official custody; the government certified in court in November 1980, (Ct. Cl 427-80C) my official record (OMPF) to be "true and exact" when it was not; the Church stated in 1995, their action of 1961 was based on the "Caraway Report." In the absence of the original official report which is unobtainable, can anyone say that this is a fair or a full opportunity to be heard or even an opportunity to discovery can be had?

23. Being a patriotic citizen, a conscientious Regular Army officer, and a responsible priest of my Church while possessing top-secret information with a "need-to-know" classification in a perilous situation with ignorant, envious and hostile fellow Chaplains is a most difficult box to be in.

24. This has been a long struggle (38 years) against both the United States Government and officials of the Catholic Church in a matter that comes down to conscience and the laws and regulations of both of these entities, concerning this plaintiff, a Catholic priest and a Regular Army Officer, confirmed by the US Senate, possessing top-secret information and having served beyond the three year probationary period, with a very high "overall efficiency index" (OEI) which covered the last seven years of ratings. I was given no notice or opportunity to be heard. After legislation in 1980 (10 USC 643) the Army changed its procedure, in effect closing the barn door after the horse is gone! (See Par. 27, below.)

My reputation, a liberty interest, has been torn to shreds by false statements of the government and the seduced credulity of my church officials or should I say gullibility.

25. *Psalm 49:8-10.* "Why should I fear in evil days, the malice of the foes who surround me, men who trust in their wealth and boast of the vastness of their riches? For no man can buy his own ransom, or pay a price to God for his life. The ransom of his soul is beyond him. He cannot buy life without end, nor avoid coming to the grave."

26. License to operate a car, a barber shop, a funeral parlor: license to practice law, license and certification as a master plumber, certification and license to be a stock broker (see all are akin to the endorsement of a religious faith body to the Department of Defense as expressed in the Code of Federal Regulations (32 CFR 65). The endorsement is essential to practice one's profession in the Military, in this case to practice one's religion.

A. *Romans 3:23-26.* "All men have sinned and are deprived of the glory of God. All men are now undeservedly justified by the gift of God, through the redemption wrought in Christ Jesus through his blood, God made him the means of expiation for all who believe. He did so to manifest his own justice."

B. *Luke 23:9-10.* "He (Herod) questioned him at some length without getting any reply, but the chief priests and lawyers appeared and pressed the case against him vigorously."

C. *Matthew 26:59-60.* "The chief priests and the whole council tried to find some allegations against Jesus on which a death sentence could be based; but they failed to find one, though many came forward with false evidence."

D. *Matthew 27:12-13.* Before Pilate -- ". . . and to the charges laid against him by the Chief priests and elders, he made no reply."

27. Go Along to Get Along! (This is a common practice.)

A false report is a false report and the fraudulent concealment thereof is pernicious. But that is the sorry history still continuing in this case despite my many, most diligent efforts administratively and judicially before Church and State authorities to reach the truth over a period of 38 years, including 17 judicial actions. (See List of Court Appearances)

Procedure used in the past (before 1980) made all chaplains subject to arbitrary action on the part of the endorsing agency. There was a change in 1980 by 10 USC 643 and procedure by the Army, (AR 635-100, Chapter 18) (Now 16), which requires notification and opportunity to be heard.

The Supreme Court has stated : "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness or fairness of procedures followed in the prior litigation" (Montana v. US, 1979, 99 S. Ct. 970, 979.)

The court relied especially on the formulation advanced in Restatement Second of Judgments #28 (which specifies exceptions) (one of which is (#4) that the burden of proof has shifted to the adversary and another is (#5); "there is clear and convincing need for a new determinationof the issue (a) because of the potential impact of the determination on the public interest or the interests of persons not themselves parties in the initial action" (i.e., in this case the Archdiocese for Military Service, USA and the Archdiocese of Boston), and (c) because the party sought to be precluded as a result of the conduct of his adversary or other special circumstances did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action" (Par. 28 of Complaint) (See also Par. 29, 30, 31 therein).

It may be repetitious but this plaintiff wishes to manifest to this Supreme Court how far the courts below have departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Supreme Court's supervisory power, that I am presenting as an exhibit my complaint to the District Court of Massachusetts. (97-11407 MLW). The lower courts certainly have ruled in opposition to this Supreme Court's finding; "Conventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights

is alleged." Sanders v. US, 373 US1, 83 S. Ct. 1068, 10 L.Ed.2d 148 (1963), 373 US 1 at 8).

"The person who writes the letter owns the words and the person to whom the letter is addressed owns the letter," (Martin Garbos, a copyright expert, *Newsweek*, 24 May 1999, p. 62). There is a necessity - a requirment of the official record in this case. (See par. 10E above.)

28. "Let us be neither dogs that do not bark nor silent onlookers nor paid servants who run away before the wolf," (which is intimated in the duplicate "Caraway Report). "Let us preach the whole God's plan to the powerful and to humble, to rich and poor, to men of every rank and age, as far as God gives us the strength, in season and out of season, as Saint Gregory writes in his book of Pastoral instruction." (From letter of St. Boniface, Bishop and matyr, 673-754.) (EP. 78: MGH, Epistolade, 3, 352-354.)

29. My request for an extension of foreign duty beyond November 1961 was granted. This extension is hardly the temperament of one "who has left his unit without a replacement in case of emergency" as is expressed in the duplicate of the "Caraway Report" in Church files.

From the beginning of a sermon On Pastors by Saint Augustine, bishop (Sermo 46, 1-2: CCL 41, 529-530)

"I must distinguish carefullyl between two aspects of the role the Lord has given me, a role that demands a rigorous accountability, a role based on the Lord's greatness rather than on my own merit. The first aspect is that I am a Christian; the second, that I am a leader. I am a Christian for my own sake, whereas I am a leader for your sake; the fact that I am a Christian is to my own advantage, but I am a leader for your advantage.

Many persons come to God as Christians but not as leaders. Perhaps they travel by an easier road and are less hindered since they bear a lighter burden. In addition to the fact that I am a Christian and must give God an account of my life, I as a leader must give him an account of my stewardship as well."

30. Stonewall Jackson after the inconclusive battle of Kernstown in the Shenandoah Valley said to a Confederate soldier concerned about the outcome of the engagement, said, "Son, the duty is ours, the consequences are God's." These are the sentiments of this plaintiff.

31. Psalm 116:10-11, "I trusted, even when I said: I am sorely afflected, and when I said in my alarm, No man can be trusted!"

32. **Title 18 USC 1623**

"§ 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

But the Government under seal and oath presented my Official Military Personnel File (OMPF) as "true and exact" before the Court of Claims in 1980 when it was not so. (App. pp. 274-275) Though not under oath Government officials have, not cleverly, but stupidly asserted that an official military government report could only be authenticated by the Church.

33. **10 USC 643 (1980)**

§ 643. Chaplains: discharge or retirement upon loss of professional qualifications

"Under regulations prescribed by the Secretary of Defense, a commissioned officer on the active-duty list of the Army, Navy, or Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his professional function, be discharged or, if eligible for retirement, may be retired."

Subsequently the Army changed its procedure ostensibly to correct the errors of procedure made in my case in 1961. (AR 635-100, Chap. 18(1)(2)) (Now Chap. 16)

34. **A. Psalm 55, 21-22** (This is indicative of IX Corps Chaplains,an administrative Corps)

"Each one lays hands on his associates, and violates his pact.
Softer than butter is his speech, but war is in his heart;
His words are smoother than oil, but they are drawn swords."

B. Mark 14:50-59 (57-59 New English Bible, Oxford)

"Many gave false witness against him, but their testimony did not agree. *Some took the stand and testified falsely against him, alleging, "We heard him say, 'I will destroy this temple made with hands and within three days I will build another not made with hands.' Even so their testimony did not agree."

35. A. Isaiah, 7:10-14

"Again the Lord spoke to Ahaz: Ask for a sign from the Lord, your God; let it be deep as the nether world, or high as the sky! But Ahaz answered, I will not ask! I will not tempt the Lord! Then he said: Listen, O house of David! It is not enough for you to weary men, must you also weary my God!? Therefore the Lord himself will give you this sign: the virgin shall be with child, and bear a son, and shall name him Immanuel."

B. Isaiah 11:3,4 *The Rule of Immanuel*

Not by appearance shall he judge,
nor by hearsay shall he decide,
But he shall judge the poor with justice,
and decide aright for the land's afflicted.

Paragraphs 36 & 37 - deleted.

38. Mortimer J. Adler, "We Hold These Truths," (1987), MacMillan Publishing Co., Pg. 48

"What the state does not give, it cannot take away. If human rights are natural rights, as opposed to those that are civil, constitutional, or legal, then their being rights by natural endowment makes them inalienable in the sense just indicated."

"Their existence as natural endowments gives them moral authority even when they lack legal force or legal sanctions. Their moral authority imposes moral obligations, which may or may not be respected or fulfilled."

"A given state or society may or may not, by its constitution and its laws, attempt to secure these rights or to enforce them. It may even do the very opposite. It may transgress or violate these inalienable natural or human rights. When it fails to enforce these rights or, worse, when it violates them, it is subject to condemnation on moral grounds as being unjust."

39. **Letter of St. Thomas More to his daughter Margaret (1535)** (Regarding conscience)

"Although I know well, Margaret, that because of my past wickedness I deserve to be abandoned by God, I cannot but trust in his merciful goodness. His grace has strengthened me until now and made me content to lose goods, land, and life as well, rather than to swear against my conscience. God's grace has given the king a gracious frame of mind toward me, so that as yet he has taken from me nothing but my liberty. In doing this His Majesty has done me such great good with respect to spiritual profit, that I trust that among all the great benefits he has heaped so abundantly upon me, I count my imprisonment the very greatest. I cannot, therefore, mistrust the grace of God. Either he shall keep the king in that gracious frame of mind to continue to do me no harm, or else, if it be his pleasure that for my other sins I suffer in this case as I shall not deserve, then his grace shall give me the strength to bear it patiently, and perhaps even gladly.

By the merits of his bitter passion joined to mine and far surpassing in merit for me all that I can suffer myself, his bounteous goodness shall release me from the pains of purgatory and shall increase my reward in heaven besides.

I will not mistrust him, Meg, though I shall feel myself weakening and on the verge of being overcome with fear. I shall remember how Saint Peter at a blast of wind began to sink because of his lack of faith, and I shall do as he did: call upon Christ and pray to him for help. And then I trust he shall place his holy hand on me and in the stormy seas hold me up from drowning.

And if he permits me to play Saint Peter further and to fall to the ground and to swear and forswear, deny, give up, renounce under oath, may God our Lord in his tender mercy keep me from this, and let me lose if it so happen, and never win thereby! Still, if this should happen, afterward I trust that in his goodness he will look on me with pity as he did upon Saint Peter, and make me stand up again and confess the truth of my conscience afresh and endure here the shame and harm of my own fault.

And finally, Margaret, I know this well: that without my fault he will not let me be lost. I shall, therefore, with good hope commit myself wholly to him. And if he permits me to perish for my faults, then I shall serve as praise for his justice. But in good faith, Meg, I trust that his

tender pity shall keep my poor soul safe and make me commend his mercy.

And, therefore, my own good daughter, do not let your mind be troubled over anything that shall happen to me in this world. Nothing can come but what God wills. And I am very sure that whatever that be, however bad it may seem, it shall indeed be the best." (The English Works of Sir Thomas More, London, 1557, p. 1454)

40. *The material I had originally intended to place in this section (citations from Sidney Calahan, C. S. Lewis, Mortimer Adler, and Cormac Burke) as authorities on conscience and moral decision making, I will place in the Appendix.*

41. A. I met Cardinal Spellman in Whitman, Massachusetts in 1964, and personally talked to him about my separation and "General Caraway's report." He said he knew General Caraway's mother and asked me to write to him. I did. His answer is in the App. But he had a duplicate Caraway Report in Church files, withheld from me. I could not tell him classified information nor could I tell Cardinal Cushing or Speaker McCormack.

B. St. Paul 2 Cor 1:8-9

"Brothers, we do not wish to leave you in the dark about the trouble we had in Asia; we were crushed beyond our strength, even to the point of despairing of life. We were left to feel like men condemned to death so that we might trust, not in ourselves, but in God who raises the dead."

C. As this court must realize a negative fact or an omission of something is particularly difficult to prove. But there should be no doubt, no question at all that a reputed report which the government has a duty to disclose if they had or have any such report comes under this category, especially since the government stipulated under blue ribbon seal and oath in court (T. Cl. 427 C) that my Official Military Personnel File (OMPF) was "true and exact," "worthy of full faith and credit" wherein there was no "Caraway Report."

42. Psalm 88:8-9 "You have taken away my friends and made me hateful in their sight. Imprisoned I cannot escape; my eyes are sunken with grief." "Friend and neighbor you have taken away, my one companion is darkness."

Officials of the church denied access of their copy of "Caraway Report" for 19 years, but used extracts, not the entire report, in a letter to my religious superior, Cardinal Cushing in 1962 in an attempt to justify their actions of 1961.

The United States of America and the Catholic Church are the entities to whom I am dedicated. Sometimes officials of either entity are at times confused, and that is especially when my individual, properly formed and informed conscience by the standards of both institutions is to be followed and obeyed, particularly as in the perilous situation on Okinawa and now in 1999 in this judicial action.

"If I forget you Jerusalem may my tongue cleave to my throat."

The Last Rites and the importance of an opportunity to receive them while alive is basic; the sacraments of the Church especially in a situation where and when death is imminent as on Okinawa is most important and so considered by 32 CFR 510.1 and the "cura animarum" (the care of souls) of the Catholic faithful which is the basic rule of pastoral care.

43. A. There has been deception of Catholic Church officials and the government has been also guilty of exculpatory behavior in statements to Senators and Congressmen that the Church officials were the only ones who could authenticate the "Caraway Report."

B. The Thayer "bursting bubble theory" of presumptions. "Rule 301, Rules of Evidence, Nutshell," p. 41, states, "the opponent must produce evidence to rebut the presumed fact. "If evidence is introduced sufficient to support a finding contrary to the existence of the presumed fact, the presumption is rebutted and has no further function at the trial." "Only the burden of producing evidence is affected by the presumption." Presumption that the "Caraway Report" is authentic, true, and cause of action and relevant and admissible, has all too often been erroneously accepted by the Lower Courts, despite General Caraway's denial. Also see Lt. Gen. Caraway's telephone call to Cardinal O'Connor of New York.

C. I had already been selected on the published the list as a Major in 1961 when unjustly and illegally separated as a sort of a hired hand, without a hearing.

D. Admissibility as evidence of a spurious, controversial, disputed duplicate of a document the putative author of which had not only denied preparing (1979) but also that no one on his staff, military or civilian, did so, is horrendous. Later in a telephone conversation with Bishop

O'Connor, now Cardinal O'Connor, he assumed and presumed that his staff was responsible. (The rules of evidence are administered by the trial judge and decided on solely by the Court. I contend that this acceptance of presumption is certainly "predjudicial error.")

E. Rule 1003 - FRCP Rules of Evidence permitting admissibility of duplicates unless (1) a genuine question is raised as to the authenticity of the original.

F. Rule 1004 (1) FRCP unless proponent lost or destroyed them in bad faith.

Tonkin Gulf - The Report and the Reaction

44. On 2 August 1964, the Pentagon reported the first of two attacks by North Vietnamese torpedo boats in the Gulf of Tonkin. This was followed in congress by the Gulf of Tonkin Resolution and everybody should be aware of what followed in South East Asia.

In 1999, an historian and former participants from both sides re-examine the traumatic South East Asia conflict in two books: 1) "Argument Without End," "In Search of Answers to the Vietnam Tragedy," by Robert S. McNamara, James E. Blight, and Robert K. Brigham, with others (479 pp. New York: Public Affairs; and 2) "Choosing War," (The Last Chance for Peace and the Escalation of War in Vietnam), by Frederick Logevall, 529 pp. Berkeley: University of California Press.

This plaintiff was well aware of the situation in 1961 and what his job was.

45. When finally obtaining a copy of the "Caraway Report" in 1980 after nineteen years of trying to gain access, it was particularly clear that the 1964 statement by the Chief of Congressional Liaison to Speaker John McCormack that the "Caraway Report" was addressed to Cardinal Spellman of NY was false. The copy clearly states to whom it was addressed and that was to the Chief of Chaplains, US Army, Washington, DC.

Short Case

A simple, concentrated explanation of what has happened over the past 38 years is that the officials of both Church and State have violated the constitution and statutory law by dishonest means, not to say illegal, unfair and discriminatory conduct infringing upon and violating my

liberty and my civil rights, resultant in at least employment discrimination.

Church officials told the then current Chief of Chaplains in 1968 that this plaintiff could not obtain a security clearance. (Sampson letter.) This statement was false!

To date, the judges in previous actions have trampled on the Federal Rules of Evidence, namely, (FRCP 1003, 1004, 44(b); Statutory Law, 10 USC 3785 and the Federal Code 32 CFR 65.5 (b)(1)(v); 5 USC 552 (a)(4)(CB), as well as the Constitution. Also ignored were 18 USC 1001, 1503, 1505, 2071.

46. This case is an example of a "hostile takeover, by unscrupulous means." This case is capable of repetition, because of "recurring issue," flesh and blood dispute, a present continuing injury, defamation, loss of reputation involving civil liberty, free exercise of religion and civil rights. It is more than ripe. It is an injury in fact, loss of professional standing. It has been unfairly evaluated as to Military Ordinariate's reaction to the copy of the "Caraway Report," as an "edict."

47. *Barron-Dienes, "Constitutional Law," p. 202 Nutshell Series*

P. 202, 203, "When government deprives a person of an already acquired life, liberty, or property interest, the Due Process clauses of the Fifth and Fourteenth Amendments require procedural fairness. Also, "today, whether an interest is a right or a privilege, when it is intentionally denied, procedural due process must be afforded (Goldberg v. Kelly, 1970).

P. 209, "Termination of one's ability to practice a profession can involve not only property but liberty interests as well." (Board of Regents v. Roth (1972))

P. 209, Early cases had indicated that when a government action "stigmatizes" a person, impairing his good name, reputation, honor, or integrity, the liberty clause requires that due process be afforded. See e.g., Wisconsin v. Constantinneau (1971). When liberty or property interest is significantly burdened, due process is necessary.

P. 458, "The ruling forces her to choose between the precepts of her religion and forfeiting benefits on the one hand and abandoning one of the precepts of his or her religion in order to accept work on the other." Justice Brennan in Sherbert v. Verner (1963)

48. Judge Peckham on p. 155, Barron-Dienes, (Constitutional law) stated in regards to the 14th Amendment, "the right to purchase or to sell labor is part of the liberty protected by this amendment. " "Liberty of contract is protected by the due process clause." (Allgeyer v. Louisiana, 1897), "There certainly was a contract between the government and the Catholic Church and there most certainly a contract between an individual priest-chaplain, after obtaining the consent of Church authorities to seek such and then obtain such a Regular Army appointment contract from the government. This contract was violated by the government's action which was an unreasonable, unnecessary and an arbitrary interference with this plaintiff's personal liberty.

Deprivations of property, as in this case caused by governmental activity, obviously invoke consideration of the application of the due process clause.

49. *Canon 24* - No custom which is contrary to divine law can obtain the force of law.

Canon 63 - 1) Subreption or the concealment of the truth; 2) obreption or statements of falsehood.

Canon 126 - An act placed because of ignorance or error concerning an element which constitutes its substance or which amounts to a condition sine quo non is invalid, an act placed out of ignorance or error can be the occasion for a rescissory action in accordance with the norms of law.

Canon 128 - anyone who unlawfully inflicts damage upon someone by a juridic act or indeed by any other act placed with malice or culpability, is obliged to compensate for damage inflicted.

50. The courts below have ignored the facts and the law.

Facts: 1. There exists no official Caraway Report.

2. The Government told Speaker McCormack the report was to Cardinal Spellman (1964).

3. Church officials used extracts from the erroneous, false report to justify their action in 1961. (See letter to Cardinal Cushing, 1962); See also a letter from the Assistant Corps Chaplain to the Military Ordinariate, dated 10 February 1961, (App. p. 155) which to this very day I have never seen. January, February 1961 was a hot time since my unit was alerted 1 January1961 for operations in Laos for which this Corps Chaplain was not cleared, and therefore his sense of obligation or conscience was flawed, as well as his amateur medical diagnosis. Each

hospital admission record is clearly marked "no evid(ence) of A or N" (alcohol or narcotics), but 2 days before my hurried and unjustified departure from Okinawa, there was (unknown to me) that fatal, flawed diagnosis, rubber stamped in Washington.

4. Church officials misunderstood security clearance to Chief of Chaplains, also to Cardinal Cushing (1968)

5. The Government declared separation not voluntary. 1974

6. Officials of Government made false statements to Senators and Congressmen.

7. ABCMR asserted that the report was to Church officials at 1974 hearing.

8. Government officials stated only the Church could authenticate.

9. Asst. Sec. Army used his opinion of church "edict" in action before ABCMR in 1984.

10. Assistant Secretary of the Army - based his opinion as to authenticity of the "Caraway Report" on Church documents (a vicious circle) 1993.

51. Sigmund Freud (a sage for the ages), a self professed atheist was a critic of religion. In an article about him in *The Boston Sunday Globe*, 6 June 1999, James P. Pinkerton has written: "The scientific spirit generates a certain posture that is hostile to any belief in the supernatural, he (Freud) wrote, 'The more the treasures of our knowledge become accessible to people, the more the defection from religious belief will spread.'"

The spirit of Freudism was clearly apparent to this plaintiff in his encounter with a psychiatrist on Okinawa for 15 minutes, (he was not cleared for top-secret matters) but most especially the one at Walter Reed Hospital (1961) also not cleared for top secret stuff, who was an avowed determinist, a non believer in free will and in effect he said so at the same time this plaintiff was muzzled by top-secret classified knowledge. As opposed to the above spirit, the Catholic Church and this plaintiff firmly hold the same faith expressed by Pope Leo the Great, many centuries ago. "... and our Redeemer's visible presence has passed into the sacraments. Our faith is nobler and stronger because sight has been replaced by a doctrine whose authority is accepted by believing hearts enlightened from on high." (Sermon 95, Brev. Vol. II, p. 937)

52. What the judges below have ignored, failed to notice, is that the government has never given to me any official report of Lt. Gen. Caraway from 1961 to the present in 1999. How in the world can anyone be acted against; his liberty violated; his freedom of conscience and free exercise of religion denied; his right to due process trampled upon, (without a fair hearing at least), resultant in defamation and deprivation of his regular Army commission (a property interest) without "access to" and "furnished copies of all records" as the law requires. (Then 10 USC 3781-3787; Now 10 USC 1181-1187.) The ABCMR is in the same boat!

53. To illustrate the significance of the actions of Church and State in 1961, I call your attention to a new law of 1980, 10 USC 643 in regard to chaplains.

Following the codification of 10 USC 643, the US Army revamped its procedure regarding the discharge of chaplains in A.R. 635-100 (Now Chapter 16) requiring notification to the chaplain and indicating his rights, in effect closing the barn door after the horse is gone!

A license is a permit from the Government or some other authority to own or do something. This is what an ecclesiastical endorsement of a Chaplain from the faith body is and the relationship of church and state is spelled out in the Code of Federal Regulations, 32 CFR 65, in contractural, covenental terms.

54. The Government's fingerprints of false statements, lying, misrepresentation, distortion, extortion, misuse of evidence, denial of legal custody, attempts at exculpation by efforts to lay responsibility for custody and authentication on my church are all over this case. But so far they have been unrecognized by judicial authorities since I first brought them to their attention in 1980, in a case before the Court of Claims (80-427), where limitations was erroneously asserted, and this became the basis for later res judicata holdings.

55. Can anyone imagine the emotional turmoil and injury suffered by this plaintiff at a time of national turmoil, in addition to loss of professional prestige and status, caused by a false report, used behind his back, to ecclesiastical officials (1961), to a Cardinal of the Church (1962), to Speaker John McCormack (1964) and other Congressmen without any real opportunity to rebut that false report or even to have access to it, without a fair and full opportunity for a hearing or, in other words, "a day in Court," despite my many judicial activities. (This is my fifth trip to the Supreme Court.) (See List of Court appearances.)

This plaintiff challenges the government to charge me with making a false affidavit in a court case when I filed affadavits on 28 February 1981 and on 6 March 1998.

Please remember that "a judicial decision, no less than an act of legislation, which invades protected religious liberty is invalid" (Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church of North America (1952), 73 S. Ct. 143, 145; 344 US 94, 97, 97 LED 120.

Also note that in the above cited case referring to the First Amendment it stated; "that means that the state has no power to interfere in or regulate the internal affairs of a church, to prescribe its ecclesiastical allegiance, to nullify its Canon Law or bar its ministers from exercising their religioius functions, in accordance with that law," as Judge Wolf has done in the District Court.

56. In general the courts traditional hesitancy to become involved in military or church matters may be commendable and prudent but when Constitutional protections and the violations of the same by collusion are involved, the courts must take notice and provide "strict scrunity."

St. Paul in his second letter to the Corinthians 13:1 wrote: "A judicial fact shall be established only on the testimony of two or three witnesses." In the same letter he said: "We cannot do anything against the truth, but only for the sake of the truth." Also, "For we have no power to act against the truth, but only for it." The "Good News Bible," Canadian Bible Society translate this as; "Any accusation must be upheld by the evidence of two or more witnesses, as the Scripture says."

57. A copy of spurious document called the "Caraway Report" was in Church files in 1968 when I tried to reenter the service in wartime. Most probably, I cannot prove this, but the duplicate "Caraway Report" was used as a basis for the Church official's "understanding" that it precluded a security clearance and this is what the Chancellor informed the Chief of Chaplains, Maj. General. Frank Sampson when he tried to get me back into the Army at that time. This noxious presence in the Church archives of the copy of the "Caraway Report" was also the basis for again an "understanding" in regard to the FBI in a letter to Cardinal Cushing of Boston. It was and has been a pernicious virus. It still is! It is festering!

58. My basic job description as a chaplain is stated in the Code of Federal Regulations (32 CFR 510.1). Therein, it states: "Chaplains will administer the sacraments accordingly to the respective beliefs and

conscientious practice of all concerned." The Canon Law of my Church (Canon 986(2)) asserts: "In urgent necessity any confessor is obliged to hear the confessions of the Christian faithful and in danger of death any priest is so obligated."

My job in 1960, 1961 was to celebrate Catholic Mass and to hear the confessions of the troops who were in danger of death as we had been alerted twice in 1961 to parachute into Vientianne, Laos. I was the one and only Catholic paratrooper chaplain in the entire Pacific area and was well aware of that fact.

59. *"Representing yourself" by Kenneth Lasson, Plume Printing (1995) See p. 166, also p. 109*

P. 109, This is a civil liberty; "the right not to be fired except for a just cause."

P. 166, This is a civil right; right to equal opportunity and equal protection of the law.

60. A. *Canon 1373* - "Anyone who publicly either stirs up hostility or hatred among subjects against the Apostolic See or against an ordinary on account of some act of ecclesiastical power or ministry is to be punished." This is another reason for my suffering silence.

B. The Military Ordinariate now the Archdiocese for Military Services, USA, has been miserably weak and supine in its duties "to promote and protect the rights and interests of its chaplains," who by Canon Law are pastors in the full canonical sense. This Archdiocese has declined to present any effort as an "amicus curiae" in this case, while they have been artfully manipulated, misused, and intimidated, in fact duped. But as the Greene case citation (Par. 11 above) manifests they are not to be held liable even though they failed to abide by the policies of the DoD (Department of Defense) as required by 32 CFR 65.5(b)(v).

C. *The Boston Globe*, 15 July 1999 has an account of the First Dorchester Savings Bank being found guilty of their failure to disclose and conspiring to make false and misleading statements in an effort to cover-up their fraudulent activities. John and Nora Moran could get up to 45 years, but this behavior is just what the government has been doing for the last thirty-eight years in this plaintiff's case.

61. Is not the basic purpose of Rule 26 FRCP in regard to discovery frustrated and an indication of bad faith when the defendant states that

the document sought in any discovery process is properly in the hands of my church and that "only" they, i.e., Church Officials, can authenticate it? These statements of government officials are false and evasive, unaceptable to any fair tribunal. Can anyone really say that due process is given in the presence of a "ghost report," as in this case? Socrates in "Minos" said; "The law is the discovery of what is." But how can this plaintiff discover "what is not" or as the government says is "not currently in military files."

Basic fairness is not to be found in any of the previous decisions of the lower courts because they have ignored, disregarded, overlooked the absence of any official document charging allegations of any kind. This is a monstrosity! No treatment for any alleged condition was afforded.

In my studies I learned that there are two basic principles of history that are equally applicable in law regarding witnesses and testimony. Principle one is called in Latin, "Sciens et Verax," (knowledgeable and true) and the second is; "Ite ad fontes," (go to the sources). These principles have been so seriously violated by the lower courts and by the Army Board for the Correction of Military Records (ABCMR) that this case calls for the exercise of this Supreme Court's power, to decide, to remand or at least to remove the bar placed on this plaintiff by Judge Wolf (District Court). Please remember that no trial was afforded this plaintiff despite a demand for such, which the Seventh Amendment affords.

62. Truly, the Emperor has no clothes! Yet gossip mongers and sycophant servers of rank and power abound. The actions of Church officials in denying me access to this spurious "Caraway Report" for nineteen (19) years, 1961 to 1980 despite Canon Law, compounded this fraud as they initially failed, as the Chief of Chaplains did, in observing the law in regard to Regular Army Officers (10 USC 3781-3787), which require a "show cause hearing," impartial and fair, and were in fact co-conspirators, and joint tort-feasors.

For anyone to assert that my resignation from the Regular Army lists was free, non-fettered, voluntary, unforced is not looking at the facts which I have presented in documentary form so many times. The verbal, oral statement made to me by the Chancellor of the Military Ordinariate in 1961 that he was the umpire and in his very words: "Ed, when I say you are out, you are out!" cannot be proven in documentary form. But the official disposition form of the government in processing my

discharge dated 24 November 1961 clearly states under remarks, "if Chaplain Cowhig's resignation is not accepted, the Military Ordinariate will withdraw his ecclesiastical endorsement." What a Hobson's Choice! How can anyone call this voluntary, as some judges below have so described it? No way, Jose!

63. It borders on an insult to be barred from further litigation in Massachusetts as Judge Wolf has done. It also is almost infuriating for the Court of Appeals (1st Cir.) to characterize my case as "meritless," "frivolous," "vexatious." It is highly offensive as I stated in my petition for a rehearing which was denied. I have asked for oral hearings and a trial many times but have been denied. Or are the courts too busy to scrutinize one individual's constitutional complaint. *The Boston Globe* on Friday, 28 May 1999 stated: "Yesterday, in a rare break of judicial etiquette, Chief Justice William G. Young called the lapse by Judge Mark L. Wolf, who apparently ignored Jane's appeals, inexplicable, ". . . in a case where the judge had devoted much of his time to a prolonged case involving high-profile mobsters."

64. William Safire in an essay for the New York Times, Monday, 26 July 1999, had this to say: "We have stumbled into an era of no fault government. Blamelessness is next to godliness; nobody in authority is held responsible for blunders, no matter how costly." This opening paragraph of that essay seems to describe adequately the forces that have been operating in my case. But even this Supreme Court can dodge granting certiorari or relief if by following its policy of strict necessity in disposing of constitutional issues, it leaves this plaintiff without a remedy for a personal, continuing injury, traceable to the government itself.

65. The courts below have so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power (Rule 10 (a)) (Rules of the Supreme Court of US). The courts below, whether out of a heavy load of cases or the carelessness of law clerks and others, have failed by ignoring evidence, covering up illegalities, using tainted evidence, labelling this plaintiff's case as "frivolous," "vexatious," "without merit" to the extent of barring, prohibiting this plaintiff from further suit in Massachusetts in a most arbitrary manner. Have the justices abdicating a sense of justice and equity become blind? "Sua Sponte" has been raised to the level of an Emporer's wish. This case is a matter of public policy in regard to the treatment of chaplains in the armed services of the United States. Even the decision of the Army Board

for the Correction of Military Records (ABCMR) in 1974 that this plaintiff was "involuntarily released" under Title 10 USC 3785 has been ignored even though that law requires a "show cause" hearing and "access to and furnished copies of all records." This has not been done to this very day.

66. The Rules Enabling Act provides that the rules "shall neither abridge, enlarge, nor modify substantive rights of any litigant." But the lower courts have abridged my substantive rights to due process, freedom to exercise my religion, and equal protection of the law resulting in continuing defamation and violation of my liberty and property interests. These injuries have occurred in the presence of clear violations of the law by the government as well as "fraudulent concealment" of the official report which it has the duty of custody, as well as disclosure by law. The fraudulent concealment has had the effect of denying this plaintiff a "fair day in court." In fact, all the previous judgements in all the courts have been infected with prejudicial error. Fraudulent concealment tolls the running of the statute of limitations which doctrine has been erroneously utilized by various judges over the years.

"A judgment against a plaintiff, however, may be given for various reasons that may have nothing to do with the substantive validity of the claim." ". . . under modern procedure, a claimant should not be penalized to the extent of losing a fair day in court on the substantive merits of a claim just because of technical or procedural errors." (Res judicata in a nutshell, by Robert C. Casad, Professor of Law, University of Kansas, p. 97).

Proceeding pro se and a non-lawyer, I may have (I don't know) committed technical or procedural errors particularly in the Court of Claims (80-427) where the "statute of limitations" was first improperly employed and later used as the basis for "res judicata."

I remind this court of the findings in Sanders v. US, 373 US1, 83 S. Ct. (1068-?) 10 LED 2d 148 (1963) where it is stated that; "conventional notions of finality have no place where life or liberty is at stake and infringement of constitutional rights is alleged."

67. A. Statute which provides that Claims Court [now United States Court of Federal Claims] does not have jurisdiction on claim for or in respect to which plaintiff has pending in any other court any suit or process against United States does not apply when plaintiff first files

claim in claims court and subsequently files same claim in another court. Clark v. US 1990, 19 Cl. Ct. 220.

B. Alexander Hamilton in the Federalist Papers, No. 78, noted that without credible and effective procedures to vindicate rights, "all the reservation of particular rights or privileges would amount to nothing."

C. Pope John XXIII, in his encyclical Pacem in Terris (1963) asserted: "any human society, if it is to be well ordered and productive, as a principle must lay down as a foundation this principle, namely, that every human being is a person; that is, his nature is endowed with intelligence and free will. Indeed precisely because he is a person he has rights and obligations flowing directly and simultaneously from his very nature. And as these rights and obligations are universal and immovable, so that they cannot in any way be surrendered (Pacem in Terris, April 1963 - Acta Apostolic SEDIS 55 (1963) 259.

C1. St. Augustine (Sermon 295, 1-2: patrologia Latina 88, 1348-1352) "This day has been made holy by the passion of blessed Peter and Paul. We are, therefore, talking about some obscure martyrs. For their voice has gone forth to all the worlds, and to the ends of the earth their message. These martyrs realized what they taught: they pursued justice, they confessed the truth, they died for it."

68. In 1964, John McCormack, the Speaker was deceived deliberately or at least that was the natural result of the misrepresentation. Cardinals and the Chancellors of the Church were duped. It was, has been, and still is a history of deceit and deception, not to be allowed by any court, especially as this plaintiff was silenced, muzzled by government classification. Also Chancellor Marbach of Military Ordinariate was unwilling to release "Caraway Report."

Dr. Franklin, a young, newly arrived doctor at Walter Reed in 1961, in effect, merely rubber stamped a diagnosis that was made a two days before I left Okinawa, without my knowledge, despite admission notes by the hospital at each of my three admissions that there was no evidence of alcohol or narcotics.

69. In a decision in Washington v. Glucksberg, handed down 26 June 1997, Chief Justice Rehnquist argued that the language from Planned Parenthood v. Casey merely described "those personal activities and decisions that this Court has identified as so deeply rooted in our history

and traditions, or so fundamental to our concept of constitutionally ordered liberty, that they are protected by the Fourteenth Amendment."

This plaintiff believes that this case presented to this Supreme Court in October 1999 incorporates what Chief Justice Rehnquist was talking about when he referred to "those personal decisions and activities."

This plaintiff now prays that he be made whole.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG, Plaintiff,	)	
v.	)	CA No. 97-11407-MLW
TOGO WEST, Secretary of the Army, et al., Defendants.	)	

ORDER

WOLF, D.J. March 18, 1998

Plaintiff Edward D. Cowhig ("Cowhig") brought this action against Togo West, Secretary of the Army ("the United States") on June 20, 1997, claiming that the circumstances surrounding his discharge in January 1962 from his position as a chaplain in the US Army violated several federal statutory and constitutional provisions. Before bringing this action, Cowhig already had unsuccessfully challenged his discharge from the Army and sought reinstatement on numerous occasions. See, e.g., Cowhig v. Stone, No. 94-11225-MEL (D. Mass. June 30, 1995), aff'd, 70 F.3d 110 (1st Cir. 1995), cert. denied, 117 S.Ct. 75 (1996), petition for rehearing denied, 117 S.Ct. 542 (1996); Cowhig v. Chief of Chaplains, No. 90-11297-WF (D. Mass. 192)(dismissing action because it was barred by doctrine of res judicata and statute of limitations), aff'd, Cowhig v. Chief of Chaplains, slip op., No. 91-2027 (1st Cir. 1992); Cowhig v. Marsh, No. 86-2192-Y (D. Mass. October 22, 1987) (dismissing action because it was barred by doctrine of res judicata and because Army's decision not to reinstate Cowhig to active status in 1984 was not arbitrary

or capricious), aff'd sub nom, Cowhig v. Secretary of the Army, No. 88-1012 (1st Cir. 1988); Cowhig v. United States, 652 F.2d 69 (ct. Cl. 1981); Cowhig v. Marsh, No. 81-1616-C (D. Mass. March 31, 1982) (dismissing complaint on grounds of res judicata), aff'd, 693 F.2d 234, 235 (1st Cir. 1982) (citing laches as an additional basis for propriety of dismissal), cert. denied, 460 U.S. 1092 (1983).

Now pending before the court are the United States' Motion to Dismiss and Motion for Permanent Injunction pursuant to 28 USC § 1651, enjoining Edward D. Cowhig from filing further litigation against the United States concerning his discharge from the Army. For the reasons described below, the United States' motions are being allowed.

For the reasons stated by the United States in its memorandum, the claims against it are barred by the doctrines of res judicata and collateral estoppel.

In addition, the court finds the United States' motion for a permanent injunction to be meritorious. The All writs Act, 28 U.S.C. § 1651(a), authorizes federal courts to issue ". . . writs necessary or appropriate in aid of their respective jurisdictions . . ."[1] It is axiomatic that federal courts "possess discretionary powers

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[1] The Act reads as follows: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651 (a).

to regulate the conduct of abusive litigants." Cok v. Family Court, 985 F.2d 32, 34 (1st Cir. 1993); Castro v. United States, 775 F.2d 399, 408 (1st Cir. 1985) ("Federal courts have the inherent power to enjoin litigants who use the courts as a stage for a personal vendetta of harassment or abuse. 28 U.S.C. § 1651(a).") (citations omitted). After all, "it is proper and necessary for an injunction to issue barring a party . . . from filing and processing frivolous and vexatious lawsuits." Gordon v. U.S. Dept. of Justice, 558 F.2d 618 (1st Cir. 1977); see Pavilonis v. King, 626 F.2d 1075, 1078 (1st Cir 1980)(enjoining litigation by issuing protective order is not unconstitutional).

To determine the appropriateness of an injunction preventing a litigant from bringing any action in a district court without advance permission, a court must consider the degree to which "indicia supporting such a comprehensive ban are present in the record." Cok, 985 F.2d at 35. Upon review of Cowhig's persistent and repetitive attempts to litigate issues foreclosed by this Court and the Court of Appeals for the First Circuit, and the United States Supreme Court, the court finds the United States' motion for a permanent injunction to be meritorious. See Kane v. New York, 468 F.Supp. 586, 590 (S.D.N.Y.), aff'd without opinion, 614 F.2d 1288 (2d Cir. 1979) ("when it becomes clear that the courts are being used as a vehicle of harassment by a 'knowledgeable and articulate experienced pro se litigant' who asserts the same claims repeatedly in slightly altered guise, the

issuance of an injunction is warranted."). Given the "baseless . . . and repetitive" nature of the plaintiff's suit, see Pavilonis, 626 F.2d at 1078, the court, in exercising its equitable and supervisory power to protect the defendant from harassment, not to mention the courts themselves from the burden of processing frivolous actions, may issue a protective order against plaintiff. See Gordon, 558, F.2d at 618 ("The law is well established that it is proper and necessary for an injunction to issue barring a party, such as appellant, from filing and processing frivolous and vexatious lawsuits.")

Accordingly, it is hereby ORDERED that:

1. Defendant's motion to dismiss (Docket No. 4) is ALLOWED and the complaint is dismissed.

2. Defendant's motion for an order enjoining Edward D. Cowhig from filing further litigation against the United States concerning his discharge from the Army (Docket No. 5) is ALLOWED.

3. Edward D. Cowhig is permanently enjoined from filing litigation in the United States Court for the District of Massachusetts against (a) the United States, (b) any agency or other unit of the United States, or (3) any past, current or future employee of the United States in which Mr. Cowhig seeks to assert claims that arise out of his 1962 discharge from the United States Army or that relate to any administrative, legislative or judicial proceedings concerning that discharge.

4. The Clerk of this Court is directed to refuse to receive, file or docket any papers

submitted by or on behalf of Edward D. Cowhig in violation of paragraph two of this Order, and to return any papers mistakenly received, filed or docketed. In addition, any document filed by or on behalf of Edward D. Cowhig in this Court in violation of this order may be stricken on motion of any interested party or by a judge or magistrate of this Court acting sua sponte when the matter comes to his or her attention.

5. If Edward D. Cowhig wishes to seek leave of this Court to file any action to which paragraph two of this Order applies, he shall file with the Clerk an Application for Leave setting fourth in the Application: (a) a copy of this Order; (b) the proposed Complaint; and (c) an affidavit or sworn declaration setting forth in detail the reasons why he believes the Complaint is not barred under the doctrine of res judicata by the Court's and the First Circuit's previous actions filed by him.

Original signed by D. J. Wolf
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD D. COWHIG, Plaintiff,	)	
v.	)	CA No. 97-11407-MLW
TOGO WEST, Secretary of the Army, et al., Defendants.	)	

ORDER

WOLF, D.J. September 29, 1998

Plaintiff Edward D. Cowhig ("Cowhig" or "plaintiff") brought this action against Togo West, Secretary of the Army ("the United States") on June 20, 1997, claiming that the circumstances surrounding his discharge in January 1962 from his position as a chaplain in the US Army violated several federal statutory and constitutional provisions. Defendant filed motions to dismiss and to enjoin Cowhig from filing further litigation against the United States concerning his discharge from the Army. On March 18, 1998, the court allowed both motions and dismissed the complaint.

In its Order dated March 18, 1998, however, the court provided that "[i]f Edward D. Cowhig wishes to seek leave of this Court to file any action to which [the injunction in] this Order applies, he shall file with the Clerk an Application for Leave setting forth in the Application: (a) a copy of this Order; (b) the proposed Complaint; and (c) an affidavit or sworn declaration setting forth in detail the reasons why he believes the Complaint is not barred under the doctrine of res judicata by the

Court's and the First Circuit's pervious actions filed by him."

On May 11, 1998, plaintiff filed an "Application for Leave as of Paragraph 5 of the Order of 18 March 1998 and Motion to File Late (sic) Also Motion to File Late Under Rules 59(a) and 60(b)(3)(6) F.R.C.P." ("Application"). For the reasons stated below, plaintiff's Application is being denied.

Plaintiff's Application does not include a proposed complaint as required by the March 18, 1998 Order. Rather, plaintiff contends that the "Complaint, filed in June 1997 . . . is still the basis of my grievances . . . " The Court's March 18, 1998 Order dismissed this complaint. For the reasons stated in the March 18, 1998 Order, therefore, plaintiff's Application is not meritorious.

In addition, plaintiff's motions pursuant to Fed. R. Civ. P. 59(a) and 60 (b)(3)(6) are being denied. Fed. R. Civ. P. 59(a) provides the grounds for a motion for a new trial. Because no trial occurred in this matter, the court has construed plaintiff's motion as a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e). Fed. R. Div. P. 59(e) provides, in pertinent part, that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of judgment." In this case, the court allowed defendant's motion to dismiss on March 18, 1998 Plaintiff filed his Application on May 11, 1998. Thus, plaintiff's Fed. R. Civ. P. 59(e) motion is untimely, and is being denied.

Finally, in order to prevail under Fed. R.

Civ. P. 60(b)(3), plaintiff must demonstrate "misconduct-like fraud or misrepresentation-by clear and convincing evidence, and must then show that the misconduct foreclosed full and fair preparation or presentation of its case."[1] Anderson v. Cryovac, Inc., 862 F.2d 910, 923-24 (1st Cir. 1988). In his Fed. R. Civ. P. 60 (b)(3) motion, plaintiff makes the same contentions of misconduct that he made in the complaint which was dismissed on march 18, 1998. The court concludes, therefore, that plaintiff's contentions do not sufficiently demonstrate misconduct within the meaning of Fed. R. Civ P. 60(b)(3). See id.

Accordingly, it is hereby ORDERED that plaintiff's Application is DENIED.

Original signed by D. J. Wolf
UNITED STATES DISTRICT COURT

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[1] Fed. R. Civ. P. 60(b)(3) provides that "the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for . . . fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct by the adverse part."

[NOT FOR PUBLICATION--NOT TO BE CITED AS PRECEDENT]

United States Court of Appeals
For the First Circuit

No. 98-1705

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

TOGO WEST, SECRETARY OF THE ARMY,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Mark L. Wolf, U.S. District Judge]

Before

Torruella, Chief Judge,
Campbell, Senior Circuit Judge,
and Lipez, Circuit Judge.

Edward D. Cowhig on brief pro se.
David K. Stern, United States Attorney, and Michael J. Pineault, Assistant U.S. Attorney, on brief for appellee.

April 2, 1999

Per Curiam. Having scrutinized the record and the parties' submissions, we affirm the order of dismissal and the injunction against further filing essentially for the reasons recited by the district court. We add only the following comments.

It is well established that courts have the power to issue injunctions "barring a party . . . from filing and processing frivolous and vexatious lawsuits." Gordon v. United States Dep't of Justice, 558 F.2d 618, 618 (1st Cir. 1977) (per curiam). While such measures are "the exception to the general rule of free access to the courts," Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir. 1980), the district court was justified here in concluding that injunctive relief was warranted. Plaintiff has now filed five meritless actions in the District of Massachusetts, and at least two others elsewhere, pertaining to the same incident--his 1962 discharge from the Army. Where a litigant has demonstrated a "propensity to file repeated suits . . . involving the same or similar claims" of a "frivolous or vexatious nature," a bar on further filings is appropriate. Castro v. United States, 775 F.2d 399, 409 (1st Cir. 1985) (per curiam); accord, e.g., Pavilonis, 626 F.2d at 1078 (noting that "plaintiff bent on reopening closed cases" fit into "classic mold" for injunctive relief).

Nor does the injunction here suffer from any of the deficiencies that have been cited in other cases. Plaintiff was given ample "notice that filing restrictions were contemplated." Cok v. Family Court of Rhode Island, 985 F.2d 32, 35 (1st Cir. 1993) (per curiam). The court made adequate findings demonstrating the need for an

injunction, and the record was "sufficiently developed" to support those findings. Id. And the injunction was "narrowly drawn to fit the specific vice encountered." Castro, 775 F.2d at 410. For example, it pertains only to filings in the local district court, brought against the United States or an agency or employee thereof, involving the 1962 discharge. And it allows plaintiff, with leave of court, to make new filings upon a showing that they are not barred by res judicata.

Filing restrictions are reviewed for abuse of discretion. See, e.g., id. at 408. No abuse of discretion being apparent, the judgment is summarily affirmed.

Affirmed. See Loc. R. 27.1.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 98-1705

EDWARD D. COWHIG
Plaintiff, Appellant

v.

TOGO WEST, SECRETARY OF THE ARMY,
Defendant, Appellee.

JUDGMENT

Entered: April 2, 1999

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the district of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:

Phoebe D. Morse, Clerk

By JANICE M. O'NEAL
Chief Deputy Clerk

[cc: Messrs. Cowhig, Stern]

United States Court of Appeals
For the First Circuit

No. 98-1705

EDWARD D. COWHIG,

Plaintiff, Appellant,

v.

TOGO WEST, SECRETARY OF THE ARMY,

Defendant, Appellee.

Torruella, Chief Judge,
Campbell, Senior Circuit Judge,
Selya, Boudin, Stahl, Lynch and Lipez
Circuit Judges

ORDER OF COURT

Entered: May 11, 1999

The petition for rehearing is denied. A majority of judges in regular active service not having voted in favor, the suggestion for rehearing en banc is also denied.

By the Court:

PHOEBE MORSE

Clerk.

[cc: Messrs: Cowhig and Pineault]

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

July 12, 1999

Area Code 202
479-3011

Mr. Edward D. Cowhig
245 C.J. Cushing Highway
Greenbush, MA 02040

RE: Edward D. Cowhig
v. Togo West, Secretary of the Army
Application No. A-43

Dear Mr. Cowhig:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on July 12, 1999, extended the time to and including October 8, 1999.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By

Original signed by Melissa A. Blalock

Melissa A. Blalock
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

January 10, 2000

Area Code 202
479-3011

Edward D. Cowhig
245 C.J. Cushing Highway
Greenbush, MA 02040

RE: Edward D. Cowhig v. Louis Caldera, Secretary of the Army
No. 99M49

Dear Mr. Cowhig:

The Court today entered the following order in the above-entitled case:

"The motion of petitioner for leave to proceed as a veteran is denied."

Very truly yours,

WILLIAM K. SUTER, Clerk

By

Original signed by Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

cc: Solicitor General
Clerk, U.S. Court of Appeals for the First Circuit (Your No. 98-1705)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

January 19, 2000

Area Code 202
479-3011

Mr. Edward D. Cowhig
245 C.J. Cushing Highway
Greenbush, MA 02040

RE: Edward D. Cowhig
v. Louis Caldera, Secretary of the Army
Application No. 99A584 (99M49)

Dear Mr. Cowhig:

The application for an extension of time within which to file a petition for a writ of certiorari in compliance with Rule 33.1 in the above-entitled case has been presented to Justice Souter, who on January 19, 2000, extended the time to and including February 5, 2000. The application to exceed the page limitations is hereby denied.

Enclosed is a sample petition in conformity with Rule 33.1.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By

Original signed by Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

A-16

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

Area Code 202
479-3011

NOTIFICATION LIST

Mr. Edward D. Cowhig
245 C.J. Cushing Highway
Greenbush, MA 02040

Hon. Seth P. Waxman
Solicitor General
Department of Justice
Washington, DC 20530

Clerk
United States Court of Appeals for the First Circuit
United States Courthouse
1 Courthouse Way
Boston, MA 02210